

CRIMINAL APPLICATION NO. 5499 OF 2004

 V/S

Mr. V.V. Purwant for applicant
Mr. S.V. Marwadi for respondent No.1
Mr. A.S. Shitole, APP for the State

Dated : 01/04/2005.

. The applicant is challenged the order of issuance of the process passed by the trial court on the complaint filed by the respondent No.1 under section 138 of Negotiable Instruments Act. The ground raised by the applicant in this application is that the complaint does not disclose that statutory notice was issued and served on the respondents. It is further submitted on behalf of the applicant that the date of issuance of notice is not mentioned in the complaint. It therefore, submitted that in the absence of any averments regarding issuance of statutory notice, the process is liable to be quashed and recalled. In support of submission, he relies upon the judgment of the Supreme Court in the case of M/s Shakti Travel & Tours vs. State of Bihar reported in 2002 DCR 258

and also the judgment of the learned single judge in the case of Chaitan M. Maniar vs. State of Maharashtra & Anr. Reported in 2004 ALL MR (Cri)2027. The learned counsel appearing for the respondent No.1 submits that the Magistrate before issuing the process has considered the complaint and statement of verification and documents filed by the complainant. It is submitted on behalf of the respondent No.1 that list of documents was filed along with the complaint. It is further submitted that in reply to the application it was also mentioned that copy of the notice was tendered along with the complaint and thereafter the process was issued.

. In the present case it is submitted by the learned counsel for the applicant that there is no averment regarding receipt of notice by the accused. However, the record indicates that the complainant had filed list of documents which is at page 56 of the application and copy of the notice, registered acknowledgment due was annexed along with the complaint. The Magistrate has considered the said documents. So far as the judgment of the Supreme Court is concerned, the admitted position in the said case was that the notices were not served and in that context the observations have been made by the Supreme Court in the case of M/s Shakti Travel & Tours vs.State of Bihar & Anr. and also the judgment of learned single Judge of this court in the case of Chaitan M. Maniar vs. State of Maharashtra & Anr. In the case of Chaitan M. Maniar it was an admitted position that copy of the notice was not addressed to the

accused. The ratio of the judgment relied upon by the applicant are not applicable to the facts of the present case. In my view all the questions raised in this application will have to be decided by the trial court only after evidence is adduced by both parties. Hence, criminal application is dismissed. However, all the question raised in this application by the applicant are kept open and the same shall be decided by the Magistrate after evidence is adduced by both parties. The trial court to decide the case as expeditiously as possible.

(V.M. Kanade, J.)